



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1003]

Certain Composite Aerogel Insulation Materials and Methods for Manufacturing the Same

Commission's Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of Section 337 of the Tariff Act of 1930, as amended, in the unlawful importation, sale for importation, and sale after importation by respondents Nano Tech Co., Ltd. ("Nano") of Zhejiang, China, and Guangdong Alison Hi-Tech Co., Ltd. ("Alison") of Guangzhou, China, of certain composite aerogel insulation materials by reason of infringement of certain claims of U.S. Patent No. 7,078,359 ("the '359 patent"); U.S. Patent No. 6,989,123 ("the '123 patent"); and U.S. Patent No. 7,780,890 ("the '890 patent"). The Commission's determination is final, and the investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>.

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 8, 2016, based on a complaint filed by Aspen Aerogels, Inc. ("Aspen") of Northborough, Massachusetts. 81 FR 36955-956 (Jun. 8, 2016). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain composite aerogel insulation materials and methods for manufacturing the same by reason of infringement of certain claims of U.S. Patent No. 7,399,439 ("the '439 patent"); U.S. Patent No. 9,181,486 ("the '486 patent"); the '359 patent; the '123 patent; and the '890 patent. The complaint further alleges that an industry in the United States exists as required by 19 U.S.C. 1337(a)(2). The notice of investigation named Nano and Alison as respondents. The Office of Unfair Import Investigations ("OUII") is also a party in this investigation.

All asserted claims of the '439 patent and the '486 patent and certain asserted claims of the '359 have been terminated from the investigation. *See* Comm'n Notice (Nov. 2, 2016); Comm'n Notice (Feb. 9, 2017). Only claims 15-17, and 19 of the '123 patent; claims 1, 5, 7, 9, 12, 15, and 16 of the '359 patent; and claims 11-13, 15, 17-19, and 21 of the '890 patent ("the Asserted Claims") remain in the investigation.

On November 15, 2016, the presiding administrative law judge ("ALJ") issued Order No. 19, granting Aspen's motion for summary determination that the economic prong of the domestic industry requirement has been satisfied under section 337(a)(3)(A) and (B). The Commission

determined to review in part Order No. 19. *See* Comm’n Notice (Dec. 7, 2016). On review, the Commission affirmed with modification the summary determination that Aspen satisfies the economic prong of the domestic industry requirement. *See id.* at 1-2.

On September 29, 2017, the ALJ issued the final initial determination (“ID”), finding a violation of section 337 by Respondents Alison and Nano in connection with claims 1, 5, 7, and 9 of the ’359 patent; claims 15-17, and 19 of the ’123 patent; and claims 11-13, 15, 17-19, and 21 of the ’890 patent. The ID also found a violation of section 337 by Respondent Nano in connection with claims 12, 15, and 16 of the ’359 patent. In addition, the ID found that Aspen has shown that its domestic industry products satisfy the technical prong of the domestic industry requirement for the Asserted Patents. The ID further found that Respondents have not shown that the Asserted Claims are invalid. The ID also contained the ALJ’s Recommended Determination on remedy and bonding.

On October 16, 2017, Respondents and OUII each filed a timely petition for review of the final ID. Respondents and OUII challenged certain of the ID’s findings with respect to the validity of the Asserted Claims and the ID’s findings with respect to claim 5 of the ’359 patent. Respondent Alison separately challenged the ID’s finding of infringement with respect to claim 9 of the ’359 patent. That same day, Aspen filed a contingent petition for review of the final ID, challenging the ALJ’s construction of two claim limitations in the ’359 patent. On October 24, 2017, the parties filed timely responses to the petitions for review. On October 31, 2017, the parties filed their public interest comments pursuant to Commission Rule 210.50(a)(4).

On November 30, 2017, the Commission determined to review the ID in part and requested briefing on issues it determined to review, and on remedy, the public interest, and bonding. 82 FR

57611-13 (Dec. 6, 2017). Specifically, with respect to the '359 patent, the Commission determined to review the ALJ's construction of the "lofty fibrous batting" limitation in claim 1 of the '359 patent. The Commission's review of the "lofty fibrous batting" limitation did not include the ID's finding that Respondents have not proven that the term is invalid for indefiniteness. The Commission also determined to review the ALJ's constructions of the additional limitations in claims 5 and 9, and the "total surface area of that cross section" limitation of claim 12 of the '359 patent, and the ID's associated findings on infringement and the technical prong of the domestic industry requirement with respect to those claims and claims 15 and 16 of the '359 patent. In addition, the Commission determined to review the ID's findings that the asserted claims of the '359 patent are not invalid in view of Ramamurthi by itself or in combination with other prior art. With respect to the '123 and the '890 patents, the Commission determined to review the ID's finding that claim 15 of the '123 patent and claims 11-13, 15, 17, and 21-23 of the '890 patent are not obvious in view of Ramamurthi and either Uchida or Yada.

On December 15, 2017, Aspen and OUII each filed initial written submissions regarding issues on review, remedy, the public interest, and bonding. On the same day, Respondents jointly filed their initial written submission regarding issues on review, remedy, the public interest, and bonding. Responses to the initial written submissions were filed on December 22, 2017.

Having examined the record of this investigation, including the parties' submissions and responses thereto, the Commission has determined that Aspen has proven a violation of section 337: (1) based on infringement of claims 1, 7, and 9 of the '359 patent; claims 15-17, and 19 of the '123 patent; and claims 11-13, 15, 17-19, and 21 of the '890 patent by Respondents Alison and Nano; and (2) based on infringement of claims 12, 15, and 16 of the '359 patent by Respondent

Nano.

Specifically, with respect to the '359 patent, the Commission affirms with modifications the ALJ's constructions of the "lofty fibrous batting" limitation in claim 1 and the "about 1 to 20%" limitation in claim 9. The Commission modifies the ALJ's constructions of the additional limitation in claim 5 and the "the total surface area of that cross section" limitation in claim 12. Applying these claim constructions, the Commission affirms the ID's findings that Respondents infringe claims 1, 7 and 9, and that Respondent Nano infringes claims 12, 15, and 16, but reverses the ID's finding that Respondents infringe claim 5. The Commission also reverses the ID's finding that Aspen's domestic industry products practice claim 5, but affirms the ID's finding that Aspen's domestic industry products practice the other asserted claims of the '359 patent. The Commission further affirms with modifications the ID's findings that claims 1, 5, 7, 9, and 12 of the '359 patent are not anticipated by Ramamurthi and that claims 9 and 16 are not rendered obvious in view of Ramamurthi and other prior art. The Commission takes no position on the ID's findings on secondary considerations of nonobviousness,

With respect to the '123 patent and the '890 patent, the Commission affirms with modifications the ID's findings that claim 15 of the '123 patent and claims 11-13, 15, 17, and 21-23 of the '890 patent are not obvious in view of Ramamurthi and either Uchida or Yada. As with the '359 patent, the Commission takes no position on the ID's findings on secondary considerations of nonobviousness.

The Commission has determined that the appropriate form of relief is a limited exclusion

order prohibiting the unlicensed entry of infringing composite aerogel insulation materials that are manufactured abroad by or on behalf of, or imported by or on behalf of Respondents or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The Commission has carefully considered the submissions of the parties and has determined that the public interest factors enumerated in section 337(d) do not preclude issuance of its order.

Finally, the Commission has determined that excluded composite aerogel insulation materials may be imported and sold in the United States during the period of Presidential review (19 U.S.C. § 1337(j)) with the posting of a bond of one-hundred (100) percent of the entered value for all infringing products manufactured by, for, or on behalf of Respondents. The Commission's Order and Opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: February 5, 2018.

Lisa R. Barton,
Secretary to the Commission.

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